U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-J-J-

DATE: AUG. 4, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a microbiology quality technician, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this employment-based second preference immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner established his eligibility as an advanced degree professional, but did not establish that a waiver of the job offer requirement is in the national interest. Specifically the Director concluded that the Petitioner had not demonstrated the necessary influence in the field.

The matter is now before us on appeal. In his appeal, the Petitioner submits a statement and a copy of an email.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to confirm that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of Job Offer –
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> (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must verify that the national interest would be adversely affected if a labor certification were required by establishing that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by documenting a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

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[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Petitioner holds a master of science in nutrition, exercise, and food science from and a bachelor of science in agricultural sciences from the He is also member of the and the and is "an At the time of filing, he was employed as a microbiology quality technician.

Upon review of the entire record, the evidence establishes that the Petitioner is a member of the professions holding an advanced degree, his work is in an area of substantial intrinsic merit and the proposed benefit will be national in scope. It remains, then, to determine whether the Petitioner demonstrated that he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Documentation supporting the Form I-140, Immigrant Petition for Alien Worker, included evidence regarding the Petitioner's academic and professional credentials. The Petitioner also submitted reference letters from colleagues attesting to his competence and work ethic. After reviewing the materials offered in response to his request for evidence, the Director denied the petition, finding that the record did not establish the Petitioner's impact on the field. For the reasons discussed below, the submitted evidence does not establish that the Petitioner's work has influenced the field as a whole as required under the third prong of the *NYSDOT* national interest waiver analysis. Without such a showing, employment in a beneficial occupation does not, by itself, qualify the Petitioner for the national interest waiver.

The record includes evidence regarding the Petitioner's graduate school work on the 2009 and 2010 " at and two related workshops. The Petitioner states that his "individual contributions" to these projects "are generally acknowledged as representing major findings, advances or breakthroughs that have enjoyed wide spread implementation." According to an assistant professor at and the principal investigator of the project, the Petitioner's responsibilities included "generating ideas, providing the visuals and descriptions of the science concepts and laboratory techniques for the graphic animators to develop the story boards" and "assist[ing] with the review process of the through the many stages of development." She indicated that he also "develop[ed] hands-on laboratory activities for wokshops [sic] and assist[ed] with the delivery of the workshops."

states that "[t]he are freely available" online and that there has been some outside interest in use by others. Specifically, she indicates that "[o]ther states are reporting using the and components of the curriculum" and that "an assistant professor from is incorporating the and components of the curriculum into an online food science course." The record does not, however, contain sufficient evidence to support such statements or otherwise demonstrate that the project has had an influence on the field of food safety as a whole. Further, she does not provide any specific examples of how

the Petitioner's contributions to the curriculum, [redacted] or workshops were novel or indicative of influence on the field. The Petitioner maintains that this work has "improve[d] education and training programs for U.S. children and under-qualified workers," which has impacted "the education community." Without supporting evidence, the availability of these documents online does not establish that they "are widely recognized and utilized as teaching and learning tools in schools." Statements made without supporting documentation are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

On appeal, the Petitioner submits a copy of an email indicating that he volunteered "to participate in the workshop for the Exam Review portion of the [redacted] exam" for [redacted] The Petitioner contends that his selection in 2014 and 2015 is evidence of his "recognition at the national level." According to a letter from [redacted] a senior member of [redacted] however, he "was selected at random" and was "a volunteer." While we agree with [redacted] that volunteering "is an indication of . . . professionalism and dedication," it is not evidence of the Petitioner's influence on his field.

Regarding the Petitioner's statements that he is "a uniquely strong contributor in the medical field" with an "outstanding interdisciplinary education," assuming his skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *See* § 212(a)(5)(A)(i) of the Act; *NYSDOT*, 22 I&N Dec. at 215, 221. We further note that, although the Petitioner qualifies as a member of the professions holding an advanced degree, educational degrees, occupational experience, certifications, professional memberships, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), (E) and (F), respectively. Pursuant to section 203(b)(2)(A) of the Act, however, foreign nationals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. An individual cannot qualify for a waiver based on a degree of expertise significantly above that ordinarily encountered in his field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver.

Finally, with regard to the reference letters from the Petitioner's colleagues, they indicate that he is "creative and productive," and "intelligent and personable." They do not, however, provide any specific examples of how the Petitioner's work has already influenced the field.

Upon review, the supporting evidence has not specifically demonstrated how the Petitioner has impacted his field. Accordingly, we find the record insufficient to demonstrate that the Petitioner has had some degree of influence on the field as a whole.

III. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. For the reasons discussed above, we find the record insufficient to confirm that the Petitioner's past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the Petitioner. Accordingly, the Petitioner has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of R-J-J-*, ID# 17446 (AAO Aug. 4, 2016)